

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

NORTHERN ILLINOIS GAS COMPANY)	
d/b/a NICOR GAS COMPANY)	
)	Docket No. 10-0562
Application pursuant to Section 8-104 and)	
Section 9-201 of the Illinois Public Utilities)	
Act for consent to and approval of an Energy)	
Efficiency Plan and approval of Rider 30,)	
Energy Efficiency Plan Cost Recovery and)	
Related changes to Nicor Gas' tariffs.)	

**DIRECT TESTIMONY
OF

MARTIN J. BOURKE**

**ON BEHALF OF
THE NORTHERN ILLINOIS MUNICIPAL NATURAL GAS FRANCHISE
CONSORTIUM**

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DIRECT TESTIMONY OF MARTIN J. BOURKE

I.

INTRODUCTION AND QUALIFICATIONS

Q. Please state your name, title and business address.

A. My name is Martin J. Bourke. I am the Village Administrator for the Village of Bloomingdale, Illinois, which is located in DuPage County. Bloomingdale is located in the Nicor Gas Company ("Nicor") service territory. My business address is 201 S. Bloomingdale Road, Bloomingdale, Illinois, 60108.

Q. What are your responsibilities in your present position?

A. I am generally responsible for the management of all Village of Bloomingdale operations, overseeing areas such as Village services, infrastructure maintenance and development, public safety, economic development, and finances. I report directly to the Village President and the Board of Trustees.

16 **Q. When did you become Village Administrator of Bloomingdale?**

17 A. I assumed my current position on November 29, 2010. Prior to that, I was employed in
18 various roles by a number of northern Illinois municipalities. I started my career in
19 municipal government in 1981 through 1983 as an intern and administrative assistant to
20 the Village Manager with the Village of Carol Stream, DuPage County. From 1984 to
21 1986 I was Assistant Village Administrator in the Village of Bloomingdale, DuPage
22 County. In 1986, I became the Village Manager of Winfield, DuPage County. In 1993, I
23 became the Village Manager of Western Springs, Cook County. In 2000, I became the
24 City Administrator, then City Manager for Oakbrook Terrace, DuPage County. In
25 September, 2010 I became the Interim Director of Community Development for Des
26 Plaines, Cook County -- a position that I held until taking my current position as
27 Bloomingdale's Village Administrator. A copy of my Abbreviated Resume is attached to
28 this Direct Testimony as Consortium Exhibit 1.1.

29
30 **Q. Please state your educational background.**

31 A. I received my Bachelor of Science degree with a major in Political Science and a minor
32 in International Relations from Northern Illinois University in 1978. I then received my
33 Master of Arts degree, with honors, in Public Administrative (Urban Management
34 emphasis) from Northern Illinois University in 1981. I also have attended numerous
35 educational seminars for local government professionals, as described on my resume.

36 **Q. In addition to your various positions in municipal government for individual**
37 **municipalities, please describe other positions you have held.**

38 A. I have held a number of leadership positions on various intergovernmental groups. For
39 example, I have twice served on the Board of Directors of the DuPage Mayors and
40 Managers Conference, which is a council of thirty-two municipal governments in DuPage
41 County, which has been in existence since 1962. I was President of the Illinois
42 City/County Management Association (“ILCMA”) in 2003. ILCMA is the Illinois
43 affiliate of the International City/County Management Association, an association of
44 thousands of local government professionals worldwide. I am currently the Chairman of
45 the Northern Illinois Municipal Natural Gas Franchise Consortium, a group that has
46 member municipalities from the DuPage Mayors and Managers Conference as well as
47 from other areas of northern Illinois. A more complete listing of my involvement in
48 intergovernmental groups is included on my resume.

49
50 **Q. On whose behalf are you testifying?**

51 A. I am testifying on behalf of the Northern Illinois Municipal Natural Gas Franchise
52 Consortium. As indicated above, I am the Chairman of that Consortium.

II.

THE NORTHERN ILLINOIS MUNICIPAL NATURAL GAS CONSORTIUM

Q. What is the Northern Illinois Municipal Natural Gas Franchise Consortium (hereafter, the “Consortium”)?

The Consortium is a joint undertaking of municipalities located in northern Illinois, organized pursuant to an Intergovernmental Agreement approved by each member municipality. There currently are sixty-five member municipalities in the Consortium, with a combined population of more than 1.3 million residents. Approximately fifty-five of the Consortium’s member municipalities are located in whole or part within the Nicor service area.

Many of the Consortium’s member municipalities are also members of the DuPage Mayors and Managers Conference (“DMMC”), which is one of the “councils of government” or “COGs” established, organized, and managed under Illinois law to provide joint planning and intergovernmental cooperation among their respective members. In addition to the DMMC, other COGs represented by the Consortium’s member municipalities include:

- The Lake County Municipal League
- The Metro West Council of Government;
- The McHenry County Council of Governments;
- The Northwest Municipal Conference;
- The South Suburban Mayors and Managers Conference;
- The Southwest Conference of Mayors;

- The West Central Municipal Conference; and
- The Will County Governmental League

Q. What is the primary purpose of the Consortium?

A. The Consortium seeks to establish a Model Natural Gas Franchise Agreement (“Model Franchise Agreement”) for use in the Nicor service territory, among other areas.

Q. What is a natural gas franchise agreement?

A. I am not a lawyer, however, it is my understanding that a franchise agreement defines in part the relationship between a municipality and a public utility operating in that municipality. Franchise agreements exist because public utilities such as Nicor have pipes and other facilities used to provide natural gas service that are located on or under property that is owned by the municipality. The Franchise agreement should explain the terms and conditions under which the gas public utility can use that public property.

Q. Why is the Consortium working on a Model Franchise Agreement?

A. Nicor presently has a standard form franchise agreement that is woefully outdated, that fails to take into account many of the developments that have occurred in the energy industry over the past several decades, much less the past several years. In many instances, municipalities entered into these agreements with Nicor over fifty years ago.

Many of the Consortium’s member municipalities in the Nicor service territory, as well as other municipalities in the Nicor service territory, have had a very frustrating

99 experience dealing with Nicor on both performance and franchise agreement issues.
 100 Many of the Consortium's member municipalities have been aggravated by Nicor's
 101 unsatisfactory performance in dealing with municipalities. The performance problems
 102 cover a range of areas, including, without limitation, failure to abide by local rules and
 103 regulations regarding field work, repairs, and restoration, and failure to respond to
 104 municipal requests in a timely manner. Overall, there is a general sense among the
 105 Consortium's members that Nicor is neither respectful of the municipalities' rights as
 106 owners of the rights-of-way nor responsive to the municipalities' needs. In addition, the
 107 Consortium believes that under the current Nicor form franchise agreement, Nicor does
 108 not compensate municipalities fairly for Nicor's use of the municipalities' rights-of-way
 109 and does not incentivize energy efficiency measures, much less work with the
 110 municipalities to implement community-wide energy efficiency programs.

111
 112 Individual municipalities have attempted to address these problems by approaching Nicor
 113 to negotiate an updated, modern franchise agreement, but those efforts have been
 114 thwarted by Nicor. It is my understanding that Nicor has refused to negotiate a new,
 115 updated franchise agreement with any individual municipality that is in the Consortium
 116 (or any other municipality). Rather, Nicor continues to offer only its decades-old form
 117 franchise agreement. As a result, several Consortium member municipalities' franchise
 118 agreements with Nicor have lapsed, and for other municipalities the term date is nearing
 119 without any prospect that Nicor will agree to anything but its antiquated form franchise
 120 agreement.

It is in this context that the Consortium was formed, with the goal of creating an updated Model Franchise Agreement. Accordingly, the Consortium, through a Drafting Committee, has studied franchise agreement issues and has created a draft Model Franchise Agreement. The draft Model Franchise Agreement addresses a range of franchise-related items that are important to the Consortium. The draft Model Franchise Agreement is intended to be a modern, fair document that defines the rights and responsibilities of both Nicor and the individual municipalities, providing a framework for appropriate compensation and advancing energy efficiency.

Q. Would you like to describe each of the issues covered in the draft Model Franchise Agreement?

A. No. It is not my intention to discuss the details of the draft Model Franchise Agreement. The draft Model Franchise Agreement is just that – a draft – and the Consortium is continuing its efforts to advance the negotiations regarding the Model Franchise Agreement in order to reach a mutually acceptable final model document. However, a number of topics that the Consortium has covered in its draft Model Franchise Agreement are directly related to energy efficiency issues. For example, the draft Model Franchise Agreement includes:

- Flexible alternative provisions regarding compensation to the municipality for Nicor's use of the municipal right-of-way, including provisions to incentivize energy efficiency improvements and energy saving conduct by the municipality;
- Energy efficiency audit and training provisions;
- An effective most-favored-nations clause to ensure that all municipalities get the benefit of modern agreement provisions, including modern energy efficiency and savings provisions;

- Fair provisions regarding service compliance standards and the provision of information to municipalities;
- Modern requirements on use of the rights-of-way, restoration, abandonment of facilities, and public safety; and
- Provisions for real remedies for non-compliance.

Q. Are energy efficiency and related items appropriately covered in the existing Nicor form franchise agreement?

A. No. Nicor’s current franchise agreement does not provide provisions that adequately address energy efficiency issues. This is not just my opinion, or the opinion of the Consortium. A recent project was undertaken by Region 5 of the U.S. Environmental Protection Agency (“USEPA”) (which covers Illinois and several other Midwestern states), to evaluate “opportunities to improve the way that municipal gas and electric utility franchise agreements are structured so that they are more conducive to energy efficiency investments.” (EPA Region 5 Municipal Utility Franchise Agreement Project – Discussion Guide, at 1.) During the course of the USEPA project, USEPA interviewed representatives of the Consortium regarding energy efficiency issues. During those conversations, USEPA recognized the value not only of the Consortium’s attempt to build energy efficiency provisions into a Model Franchise Agreement, but also the value of negotiating collectively rather than individually with Nicor. For example, the draft report issued by USEPA makes the following statement under “Recommendations for Municipalities”:

Consider negotiating with the utility providers for a cash compensation option that both promotes energy efficiency and meets the municipality’s financial needs, including the need for protection against energy price increases, or consider negotiating collectively with other municipalities.

(USEPA Sept. 8, 2010 Draft Final Utility Franchise Agreements Summary Report – Research on Implementing Energy Efficiency Investment within Illinois Municipalities that Receive Unbilled Energy, at 23.) This is precisely the approach that the Consortium has taken.

Q. Has Nicor been willing to discuss franchise agreement issues with the Consortium?

A. The Consortium has met with Nicor, however Nicor has been hesitant to discuss franchise agreement issues in substantive detail and has not yet fully engaged in a productive negotiation with the Consortium.

III.

NICOR HAS MADE NO EFFORT TO CONSULT THE CONSORTIUM ON ENERGY EFFICIENCY ISSUES

Q. Are municipalities supposed to be covered by the Nicor energy efficiency program?

A. It is my understanding that the Public Utilities Act (the “Act”) specifically states:

A minimum of 10% of the entire portfolio of cost effective energy efficiency measures shall be procured from local government, municipal corporations, school districts, and community college districts. Five percent of the entire portfolio of cost-effective energy efficiency measures may be granted to local government and municipal corporations for market transformation initiatives.

(220 ILCS 5/8-104(e).) The Act indicates that there is supposed to be coordination between Nicor and the Illinois Department of Commerce and Economic Opportunity (“DCEO”) regarding development of the Nicor energy efficiency program, including the provisions relating to municipalities, but that Nicor is “responsible for overseeing the design, development, and filing of” the energy efficiency plan. (*Id.*)

Q. Did Nicor make any effort to consult with the Consortium in preparing its energy efficiency program?

A. As far as I know, Nicor made no effort to consult with the Consortium regarding Nicor's energy efficiency program, even though energy efficiency is a key part of the draft Model Franchise Agreement that the Consortium has been working on (as discussed above) and energy efficiency measures aimed at "local government [and] municipal corporations" are specifically required by the section of Act mandating the Nicor energy efficiency program. (*Id.*) The lack of consultation is surprising. Nicor witness James J. Jerozal, Jr. emphasized in his Direct Testimony that "collaboration" with various stakeholders was one of the four "primary principles" that Nicor followed in developing its energy efficiency plan. (Nicor Ex. 1.0 at 10:207-17.) However, Nicor has not collaborated with the Consortium. It should be noted that Nicor has known about the Consortium's existence for many months and certainly knew how to contact the Consortium easily if it chose to do so.

Q. Did the DCEO make any effort to consult with the Consortium in preparing its portion of the Nicor energy efficiency program?

A. Again, as far as I know, DCEO did not consult with the Consortium regarding Nicor's energy efficiency program. In fairness, it is certainly possible that the DCEO itself did not have first-hand knowledge of the Consortium as it was preparing its portion of the Nicor energy efficiency program. However, Nicor itself certainly did know about the Consortium and could have easily made DCEO aware of the Consortium. Nicor witness Mr. Jerozal stated that the second "primary principle" that Nicor followed in preparing its

energy efficiency program was to “collaborate with” DCEO. (*See id.* at 10:207-12.)
However, it is distressing that neither Nicor nor DCEO consulted with the Consortium on
energy efficiency issues.

IV.

RECOMMENDATION AND CONCLUSION

Q. What action would you recommend that the Commission take?

A. The Act makes it clear that municipalities are supposed to be included in the energy
efficiency plan submitted by Nicor. Indeed, not less than 10% of the energy efficiency
portfolio is supposed to be procured from municipalities and similar local public entities.
(*See* 220 ILCS 5/8-104(e).) There is a clear potential overlap between energy efficiency
issues that are statutorily required under the Nicor energy efficiency plan and the energy
efficiency issues that the Consortium is seeking to advance through the Model Franchise
Agreement. Accordingly, it would be constructive for the Commission to direct Nicor to
consult with the Consortium in a meaningful, substantive manner on energy efficiency
and related matters. I understand that the Commission has comprehensive supervisory
authority over the operations of Illinois public utilities such as Nicor, including franchise
agreements, and that the Commission possesses broad discretion to determine what the
public interest requires and what measures are necessary for the protection of the public
interest. Given the Commission’s authority, and the clear interplay between energy
efficiency-related items and the Consortium's efforts to establish a Model Franchise
Agreement, the Commission would be acting appropriately and in the public interest in
taking steps to direct Nicor to consult with the Consortium.

249 **Q.** **Does this conclude your Direct Testimony?**

250 **A.** Yes.